

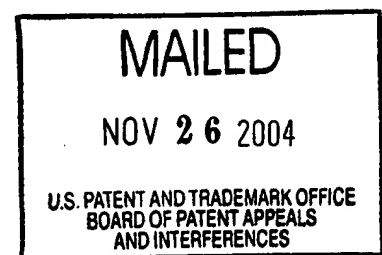
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte JOHN T. PUGACZEWSKI, JEFFREY T. KAYS,
NICHOLAS P. CHANTILLOUPE, and FRED M. HENDRICKS

Appeal No. 2004-0855
Application No. 09/469,206

ON BRIEF



Before HAIRSTON, FLEMING, and BARRY, *Administrative Patent Judges*.
BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

A patent examiner rejected claims 1-10. The appellants appeal therefrom under 35 U.S.C. § 134(a). We affirm.

BACKGROUND

The invention at issue on appeal configures a network connection. (Spec. at 1.) More specifically, the invention allows a user to select a speed of service via a graphical user interface. (*Id.* at 37-38.) For example, a customer working at 256 kbps may change to 512 kbps or 768 kbps. (*Id.* at 39.) According to the appellants, such

self-selection of speeds "mitigate[s] additional truck-rolls and technician dispatches via remote network provisioning of service upgrades to higher (or lower) classes of service." (*Id.* at 37.)

A further understanding of the invention can be achieved by reading the following claim.

7. A method for providing, to a user, a user interface to a network management system for configuring a network connection between a provider access point and a user access point over a network including a permanent virtual circuit between a switch and the user access point, the method further comprising:

establishing a graphical user interface to the user at the user access point that interfaces the user with the network management system;

directing the user, through the user interface, to select a connection bandwidth for the permanent virtual circuit between the switch and the user access point;

receiving at the network management system, through the user interface, a message indicative of a selected bandwidth from the user; and

remotely provisioning the switch with the network management system in response to receiving the message to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the user selected bandwidth thereby allowing the user, from the user access point, to interface with the network management system and select a bandwidth that is, in turn, provisioned as the connection bandwidth between the switch and the user access point.

Claims 1 and 4 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,307,836 ("Jones"). Claim 2 stands rejected under 35 U.S.C. § 103(a) as obvious over Jones and U.S. Patent No. 6,377,554 ("Farnsworth"). Claims 3, 6, 7, and 9 stand rejected under § 103(a) as obvious over Jones and U.S. Patent No. 6,292,834 ("Ravi"). Claim 5 stands rejected under § 103(a) as obvious over Jones and U.S. Patent No. 5,953,338 ("Ma"). Claim 8 stands rejected under § 103(a) as obvious over Jones, Ravi, and Farnsworth. Claim 10 stands rejected under § 103(a) as obvious over Jones, Ravi, and Ma.

OPINION

"[T]o assure separate review by the Board of individual claims within each group of claims subject to a common ground of rejection, an appellant's brief to the Board must contain a clear statement for each rejection: (a) asserting that the patentability of claims within the group of claims subject to this rejection do not stand or fall together, and (b) identifying which individual claim or claims within the group are separately patentable and the reasons why the examiner's rejection should not be sustained." *In re McDaniel*, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002) (citing 37 C.F.R. §1.192(c)(7) (2001)). "If the brief fails to meet either requirement, the Board is free to select a single claim from each group of claims subject to a common ground of

rejection based solely on the selected representative claim." *Id.*, 293 F.3d at 1383, 63 USPQ2d at 1465.

Here, the appellants stipulate, "claims 1, 4 stand or fall together." (Appeal Br. at 8.) We select claim 1 from the group as representative of the claims therein. With this representation in mind, rather than reiterate the positions of the examiner or the appellants *in toto*, we focus on the sole point of contention therebetween. The examiner finds, "Jones[]" handshaking must include the user sending a message to change the bandwidth (also shown in Fig. 4, and col. 6, lines 50-56, and col. 7, lines 25-31)." (Examiner's Answer at 10.) He further finds "[f]rom there, it is clear that the switch changes the bandwidth. . . . [T]he bandwidth change is in response to the message, which is shown in the teachings (col. 9, lines 45-50, and Fig. 4). The details of this are further illustrated in col. 10, lines 55-67 and col. 11, lines 20-55." (*Id.* at 10.) The appellants argue, "Jones connects the user signal through the local switch fabric to the transport network bandwidth using a handshaking technique as opposed to the claimed technique of throttling the network connection at the switch in response to receiving a message. . . ." (Appeal Br. at 9.)

In addressing the point of contention, the Board conducts a two-step analysis. First, we construe the representative claim at issue to determine its scope. Second, we determine whether the construed claim is anticipated.

1. CLAIM CONSTRUCTION

"Analysis begins with a key legal question — *what is the invention claimed?*" *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987). In answering the question, "the Board must give claims their broadest reasonable construction. . . ." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1668 (Fed. Cir. 2000). Furthermore, "[a] transitional term such as 'comprising' or . . . 'which comprises,' does not exclude additional unrecited elements, or steps. . . ." *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1271, 229 USPQ 805, 812 (Fed. Cir. 1986).

Here, claim 1 recites in pertinent part the following limitations: "remotely provisioning the switch with the network management system in response to receiving the message to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the user selected bandwidth. . . ." Giving the representative claim its broadest, reasonable construction,

the limitations require limiting the bandwidth of a network connection in response to a user's request. Because claim 1 uses the transitional term "comprising," however, it does not exclude additional elements or steps.

2. ANTICIPATION DETERMINATION

"Having construed the claim limitations at issue, we now compare the claims to the prior art to determine if the prior art anticipates those claims." *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349, 64 USPQ2d 1202, 1206 (Fed. Cir. 2002).

"[A]nticipation is a question of fact." *Hyatt*, 211 F.3d at 1371, 54 USPQ2d at 1667 (citing *Bischoff v. Wethered*, 76 U.S. (9 Wall.) 812, 814-15 (1869); *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997)). "A claim is anticipated . . . if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (citing *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715, 223 USPQ 1264, 1270 (Fed. Cir. 1984); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983); *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983)).

Here, Jones discloses "a technique by which a user conveys to network intelligence a request to operate a digital subscriber loop (DSL) in a particular manner." Col. 4, ll. 13-15. After "establish[ing] a communications session," *id.* at l. 16, "the technique allows a user to communicate to a network intelligence device a first line mode of accessing [a] network." *Id.* at ll. 17-19. Thereafter, "the technique permits the user to request that the network intelligence device change the communications session to a second line mode of accessing the network." *Id.* at ll. 19-21. The possible "[a]ccess line modes include available bit rate (ABR), variable bit rate (VBR) and constant bit rate (CBR) applications." *Id.* at ll. 23-25.

A user operating in the VBR mode, for example, may change to the CBR mode. Figure 4 of the reference "depicts a flow diagram 402," col. 10, l. 56, of how this is done. First, a "user 104 communicates a desired access line mode to network intelligence 114 through user control interface 118 and 'D' channel signaling." Col. 10, ll. 58-60. Because the user has requested the CBR mode, "operation branches to step 410," col. 11, ll. 24-26, and "the network intelligence 114 verifies whether the network has sufficient unused capacity to fulfill the CBR request of user 104." *Id.* at ll. 36-38. "The verification . . . entails processes of validation, protocol/bit-rate negotiation, routing, and handshaking. If network intelligence 114 determines

that the network has sufficient capacity to fulfill the CBR request, then operation continues with step 416." *Id.* at ll. 38-43. "In step 416, local switch fabric 110 connects the signal of user 104 through transport bandwidth 112 for CBR mode access," *id.* at ll. 46-48, and "CBR communication proceeds." *Id.* at l. 49.

Once in the CBR mode, the bandwidth of the user's network connection is limited to a constant bit rate. Whereas the VBR mode may have allowed the bandwidth to vary between a lower bit rate and a maximum bit rate, for example, the CBR mode may limit the bandwidth to a bit rate well below the maximum bit rate.

The appellants' argument attempts to distinguish Jones by emphasizing that the reference verifies whether the network has sufficient unused capacity to fulfill the request for a CBR before doing so. Because claim 1 is open-ended, however, it does not preclude an additional element of verification. Therefore, we affirm the anticipation rejection of claim 1 and of claim 4, which falls therewith.

Rather than arguing the rejections of claims 2, 3, and 5-10 separately, the appellants rely on their aforementioned argument. (Appeal Br. at 10-11.) Unpersuaded by these arguments, we affirm the obviousness rejections of claims 2, 3, and 5-10.

CONCLUSION

In summary, the rejection of claims 1 and 4 under § 102(e) is affirmed. The rejections of claims 2, 3, and 5-10 under § 103(a) are also affirmed.

"Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences. . . ." 37 C.F.R. § 1.192(a). Accordingly, our affirmance is based only on the arguments made in the briefs. Any arguments or authorities omitted therefrom are neither before us nor at issue but are considered waived. *Cf. In re Watts*, 354 F.3d 1362, 1367, 69 USPQ2d 1453, 1457 (Fed. Cir. 2004) ("[I]t is important that the applicant challenging a decision not be permitted to raise arguments on appeal that were not presented to the Board.") No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).


KENNETH W. HAIRSTON
Administrative Patent Judge

) BOARD OF PATENT
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LANCE LEONARD BARRY
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